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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 625

COLLEGE HOMES, INC.,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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343 U.S.

COLLEGE HOMES, INC.,
By ALDEN CHAS. PALMER,
President.

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SUPREME COURT OF THE UNITED STATES

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No. 625

COLLEGE HOMES, INC.,

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vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

College Homes, Inc., a corporation, through its president, pursuant to Title 28, United States Code, Section 1654, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered December 3, 1951, affirming the judgment of the District Court of the United States for the Western District of Oklahoma, entered March 23, 1951.

Jurisdiction

The Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

Questions Presented

1. DID THE DISTRICT COURT DEPRIVE PETITIONER OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW, CONTRARY TO THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

2. DID THE DISTRICT COURT ENTER JUDGMENT PREJUDICIAL TO THE PETITIONER WITHOUT A VALID TRIAL?

Statement of the Case

Petitioner, though persevering, was unable to obtain counsel prior to trial date. (R. 78, 57-59). Petitioner's pleadings, though drawn by a layman, being both crude and prolix, may be said to spell out conspiracy to defraud the United States Government and this petitioner, as one of the defenses (R. 14-48)

The case was the subject of a pretrial conference on January 29, 1951 (R. 71-78), when it was set for trial on March 20, 1951. Petitioner's president, Mr. Palmer, was informed about 4:00 p.m., Friday, March 16, 1951, that this case would be heard at 9:30 a.m., Monday, March 19, 1951, a day earlier than previously set. (R. 59). Neither at the pre-trial conference (R. 72) nor on the date of the trial (R. 78) was petitioner represented by counsel, although petitioner expressed desire for counsel. (R. 74, 91, 101, 103). The Honorable Stephen S. Chandler, Jr., Judge, entered judgment in the United States District Court for the Western District of Oklahoma, foreclosing mortgages, three real estate and one chattel, in the amount of $541,000.00. (R. 48)

Details concerning Petitioner's efforts to employ competent counsel are set forth in the First Affidavit of Mr. Palmer, (R. 57-59). The second Affidavit (R. 59-70) sets forth details developing the pattern of conspiracy used in defrauding the Government of the United States and this

Petitioner, and which disabled petitioner from meeting its obligations to pay the notes and mortgages.

Specifications of Errors To Be Urged

1. The court below erred in approving the action of the District Court in proceeding to trial with the knowledge that the complex issues presented by the defense of conspiracy would not properly be presented for determination by the court without preparation by competent counsel.

2. The court below erred in approving the action of the District Court in misleading the petitioner to believe that fraud could be a defense against the United States of America, contrary to the provisions of the Tort Claims Act.

3. The court below erred in approving the failure of the District Court to make Mr. Palmer and the three construction companies parties to the action when their interest became apparent.

Reasons For Granting the Writ

The District Court of Appeal entered judgment prejudicial to the Petitioner which affirmed a judgment against Petitioner that had been entered without a valid trial, and which deprived Petitioner of its property without due process of law, contrary to the Fifth Amendment to the Constitution of the United States of America.

Conclusion

Certiorari should be granted.

College Homes, Inc.,
By Alden Chas. Palmer,
President,
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BRIEF IN SUPPORT OF PETITION

I

The District Court Deprived Appellant of its Property Without Due Process of Law, Contrary to the Fifth Amendment to the Constitution of the United States

In so far as property of a corporation is concerned, private corporations are protected by the Constitutional guaranty of due process of law. (*Louis K. Liggett Co.* v. *Baldridge*, 278 U.S. 105) An opportunity for hearing is one of the essential elements of due process of law and no one may be divested of his property unless he is allowed a hearing before an impartial tribunal, where he may contest the claim set up against him, and be allowed to meet it on the law and facts. (*Iron Cliffs Co.* v. *Negaunee Iron Co.*, 197 U.S. 463). And the right to a hearing includes a right to the aid of counsel. (*Powell* v. *Alabama*, 287 U.S. 45)

Powell v. *Alabama* defines a "hearing" and that definition, we submit, draws no distinction between a criminal and a civil case. When the Constitution requires a hearing, it requires a fair one, (*Wong Yang Sung* v. *McGrath*, 339 U.S. 33); and when property rights are concerned, an opportunity for a fair hearing at some stage is required to meet due process. (*Ewing* v. *Mytinger & Casselberry*, 339 U.S. 594). Petitioner respectfully submits that it failed to get a fair hearing, there being no adequate presentation by qualified counsel of issues relevant to the litigation.

A trial, with both sides represented by competent counsel, is far more important for the benefit of the court, as a protection against an unwise decision, than for the benefit of the litigants. And interests of justice would best be served by a trial with both sides represented by

counsel, particularly when requested by the litigants. Petitioner, through its president, Mr. Palmer expressed a desire for counsel (R. 74, 91, 101, 103) and the court knew that he had diligently sought counsel to represent petitioner (R. 74).

In determining whether a party has had sufficient opportunity for the preparation of its case, the sound discretion of the court is to be exercised in the light of the surrounding circumstances. The first affidavit of Mr. Palmer (R. 57-59) paints the "surrounding circumstances," and shows that the court put this case to trial on March 19, 1951, with knowledge that appellant, in good faith, for several months up to and including the week of March 11, 1951, had tried in vain to employ competent counsel, and knew the names of at least four of them, two of whom had been paid a fee. That affidavit, we submit, squarely meets this test.

The District Court Entered Judgment Prejudicial to the Appellant Without a Valid Trial

Appellant was entitled:

(1) to be advised at the pre-trial conference of the true purpose of a pre-trial conference so that it might reap all the benefits thereof.

> "The Court: And the purpose of pre-trial is to save time in the trial of the case."
>
> "Mr. Palmer: I understand that, Your Honor". (R. 72)

What the court told Mr. Palmer, and what Mr. Palmer "understood", is foreign to what was said in *Berger* v. *Brannan* (CA-10; 1949), 172 Fed. (2) 241, 243:

> "The purpose of the pre-trial conference is to simplify the issues, amend the pleadings where necessary,

> and to avoid unnecessary proof of facts at the trial. • • • The spirit of the pre-trial procedure is not only to call the parties together and ask them to stipulate and agree as to all matters concerning which there can be no dispute, but to compel them to stipulate and agree to all facts concerning which there can be no real issue."

(2) to be advised at the pre-trial conference that fraud was not a defense, instead of being told too late that it was not.

At the pre-trial conference, Mr. Palmer stated Petitioner's position (R. 72, 73).

> "The Court: Now, of course, what is stated here are his conclusions. What evidence are you going to have to prove these statements?
>
> "Mr. Palmer: Your Honor, I beg to be released from any further questions unless I have proper counsel. (R. 74)
>
> • • • • • • •
>
> "The Court: You don't need to worry. You don't need any help from anybody except this court if you can prove the things you say you can that there was fraud." (R. 77).

The court's statement to Mr. Palmer not to worry was soothing to him as a layman, but it proved to be misleading, and (3) not to be postured in the position of relying upon hearsay evidence, after objection thereto.

The hearsay evidence had been objected to (R. 80), thus it was not admissible in evidence as evidence. (*Baltimore-American Insurance Co.* v. *Pecos Mercantile Co.*, CA-10; 1941; 122 Fed. (2) 143, 146). An appellate court will reject improperly admitted evidence. (*United States* v. *King*, 7 How. 833, 854, 855).

Another feature deserves attention. All of the interested parties were not before the court.

> "Mr. Palmer: * * * College Homes, Inc. is here resisting the efforts of the United States to foreclose mortgages on its properties located at Stillwater, Oklahoma, unless its interests and those of A. C. Palmer Construction Company, an Oklahoma corporation, dissolved August 29, 1948, A. C. Palmer and Company, a California Corporation, A. C. Palmer Construction Co., a California corporation, Alden Charles Palmer, president, * * * are recognized and fully protected by the court. * * * " (R. 82). "College Homes Inc. and the three construction companies * * * and Alden Charles Palmer, have ploughed $250,000 * * * into the venture, and are entitled to intervene and be heard" (R. 86).

In all fairness, upon this information coming to the attention of the court, it should have made Mr. Palmer and the three construction companies parties, sua sponte. When the United States itself seeks its rights at the hands of the court, equity requires that the rights of other parties interested in the subject matter be protected. (*Carr* v. *United States,* 98 U.S. 433).

Other excerpts from the trial proceeding show that Mr. Palmer was confused when he appeared before the court alone on Monday March 19, 1951, a day earlier than the case had been previously set. (R. 59, 78, 81)

> "The Court: You don't have a lawyer yet, do you——"
>
> "Mr. Palmer (Interposing): No, I do not, Your Honor."
>
> "The Court: Mr. Palmer. *You are going to represent yourself then?*"
>
> "Mr. Palmer: Yes sir."

* * * * * * *

"Alden Chas. Palmer, *appearing in his own behalf*, then being first duly sworn to tell the truth, stated and testified as follows: * * * " (Italics substituted)

It would appear, thereby that no one appeared for the Petitioner, that Mr. Palmer appeared *in propria personam* though not a party to the proceedings, and that Mr. Palmer was not alone confused, unless the court eyed Petitioner as Mr. Palmer's *alter ego*.

This Court has the power of supervision over the administration of justice in the District Courts, and this Court ought not to sanction the method followed by the District Court in the disposition of this case. *Cf. Thiel* v. *Southern Pac. Co.*, 328, U.S. 217, 225.

As was cited in *United States* v. *Chapman* (CA-10; 1946), 158 Fed. (2) 417, 421, said:

> "We must make sure that the lamentations of the unsuccessful litigant are without foundation, either in fact or circumstance."

Since a conspiracy between officers and employees of the Government of the United States, holding positions of trust, is involved in this case, the United States of America is estopped to set up its claim against Petitioner.

> "The applicable principle is fundamental and unquestioned. He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him, in effect: 'This is your own act, and therefore you are not damnified.' Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found claims upon his own inequity or

take advantage of his own wrong. * * * A suit may not be built on an omission induced by him who sues." *Stearns Co.* v. *United States*, 291 U.S. 54.

It is respectfully submitted that this petition should be granted.

COLLEGE HOMES, INC.,
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